

June 3, 2019

Mr. Francesco Gentile, R.L.A.
Geo-Technical Associates, Inc.
3445-A Box Hill Corporate Center Drive
Abingdon, MD 21009

RE: Ballard Green
Forest Conservation Variance
Tracking # 04-19-2986

Dear Mr. Gentile:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department of Environmental Protection and Sustainability (EPS) on April 26, 2019. The variance, requested in accordance with Section 33-6-116 of this Law, seeks approval to remove eight (8) specimen trees for the construction of the final phase of Ballard Green, an existing, large residential development on approximately 105 acres in Owings Mills. This final phase includes an additional 188 townhouses. The original development plan proposed single family detached dwellings for this phase; however, market demands required a change to townhouses, thus affecting the previously approved development layout.

According to the variance application package, 8 specimen trees would be removed; however, EPS staff discovered an additional viable native specimen, a 36-inch red maple in fair condition, and also that the 67-inch diameter at breast height (DBH) silver maple listed as poor condition is actually 66-inches DBH and in fair condition. There is also an approximately 36-inch DBH Norway maple (*Acer platanoides*) in very poor condition for a total of 10 specimen trees. Therefore, the actual specimen trees to be removed include: a 40-inch DBH black walnut (*Juglans nigra*) in fair condition; a 65 inch DBH silver maple (*Acer saccharinum*) in good condition; a 66-inch DBH silver maple in fair condition, three other silver maples-all in poor condition, measuring 72, 67, and 50 inches DBH; a 36-inch DBH red maple (*Acer rubrum*) in fair condition; the aforementioned Norway maple in very poor condition; a 48-inch DBH black locust (*Robinia pseudoacacia*) in fair condition; and finally, a 45-inch DBH Ginkgo tree (*Ginkgo biloba*) in good condition. All of the trees to be removed are located in the yard surrounding the historic farm house. The applicant proposes to pay a fee-in-lieu of mitigation for the native specimen trees to be removed that are in fair condition or better.

The Director of EPS may grant a special variance to the Forest Conservation law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the three criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant is seeking to build the remaining residential units in an existing development that previously complied with the Forest Conservation Law. While full application of the law would provide a hardship in that the locations of the trees cause development design limitations, it does not deprive the petitioner of all beneficial use of the property. Therefore, this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The petitioner's plight is due to unique circumstances associated with the number and locations of specimen trees relative to the buildable area rather than the general conditions in the neighborhood. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The proposed dwelling units are consistent with the style and density of the surrounding residential neighborhoods. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The specimen trees to be removed are not within any Forest Buffer Easement or forest. The development project will not impact any forested Forest Buffer Easement and will meet current water quality management requirements. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The petitioner has not taken any actions necessitating this variance prior to its request. Therefore, this criterion has been met.

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The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Permitting the removal of ten specimen trees to construct the final phase of a development that will comply with both the Forest Buffer Law and the Forest Conservation Law would be consistent with the spirit and intent the Forest Conservation Law. This is especially true given that no additional forest would be cleared for this development activity beyond that clearing addressed in the approved forest conservation plan (FCP) for Ballard Green. Additionally, 5 of the 10 trees to be removed are in poor condition or are nonnative species. A fee in lieu of mitigation for removing the five native specimen trees in fair condition or better will be paid. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Mitigation for the removal of the five native specimen trees in fair condition or better shall be addressed by paying a \$13,325 fee in lieu of mitigation based on 25% of the critical root zones of these trees. This fee shall be paid to EPS prior to approval of any permit. Checks must be made payable to Baltimore County.
2. Prior to issuance of any Baltimore County permit, blaze orange high visibility fence shall be installed along the limit of disturbance (LOD) wherever the LOD is within 50 feet of any remaining specimen tree, Forest Conservation Easement, or Forest Buffer Easement. This protective fence shall be illustrated on the plan view and mentioned in the sequence of operations on the sediment control plan.
3. The following note must appear on all subsequent plans for this project:
 - “A special variance was granted on June 3, 2019 to Baltimore County’s Forest Conservation Law to allow removal of ten specimen trees. Conditions were placed on this variance, including payment of a fee in lieu of mitigation for the viable native specimen trees to be removed.”

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the appropriate representative sign the statement on the following page and return a signed copy of this entire letter to this Department within 21 calendar days.

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Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/ges

- c. Steve Smith, Gaylord Brooks
Marian Honecny, Maryland Dept. of Natural Resources

I/we agree to the conditions enumerated in this approval letter to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Owner/Developer

Date

Printed Name